

State of Maryland
State Higher Education Labor Relations Board

In the matter of:)	
)	
Fraternal Order of Police)	
Lodge 82,)	SHELRB No. UC 2005-03
Petitioner)	Opinion No. 22
)	
v.)	
)	
University of Maryland)	
Baltimore County,)	
Respondent)	

DECISION AND ORDER

Summary of Case:

This unit clarification case comes before the State Higher Education Labor Relations Board ("SHELRB" or "the Board") on the petition of the Fraternal Order of Police, Lodge 82 ("FOP"), seeking to include three sergeants in the bargaining unit of sworn police officers at the University of Maryland Baltimore County ("UMBC"). UMBC contested the petition on the grounds that the Sergeants are supervisors and therefore should be excluded from the bargaining unit.

The SHELRB delegated this case for a hearing on the merits before the Office of Administrative Hearings ("OAH"). After ALJ Yolanda Curtin held a one-day hearing, she recommended that FOP's petition (i.e. seeking to include the Sergeants in the collective bargaining unit) be dismissed. For the reasons set forth below, we agree with the ALJ's decision finding that the Sergeants are supervisors and thus excluded from the collective bargaining unit, and we hereby dismiss this petition.

Procedural History:

On June 6, 2005, FOP filed a unit clarification petition before the SHELRB, seeking to include three sworn members of UMBC's Police Department, holding the rank of Sergeant (or "University Police Officer IV") within the bargaining unit. On June 17, 2005, UMBC filed a response to FOP's petition and a motion for summary judgment, alleging that the Sergeants are supervisors and are therefore statutorily excluded from the bargaining unit under State Personnel and Pensions Article § 3-102(b)(12)(2004). The Executive Director of SHELRB dismissed that motion on July 27, 2005, for administrative reasons, on the grounds that the case was in the investigative phase and that the Executive Director had no authority to consider the motion at that time.

On August 4, 2005, SHELRB delegated authority to OAH to conduct a hearing regarding FOP's petition. The scope of authority delegated to OAH was limited to issuance of final findings of fact, proposed conclusions of law and a proposed order, regarding FOP's petition. On November 1, 2005, UMBC filed a summary disposition motion with the OAH. Following a hearing on the motion, the ALJ issued a proposed ruling, granting summary judgment in favor of UMBC and dismissing the petition. However, on March 1, 2006, the Board reversed the ALJ's decision granting summary judgment and remanded this case back to OAH for a full hearing on the merits.

On May 5, 2006, OAH conducted a full hearing, wherein both parties were permitted to present testimony and exhibits on the issue of the Sergeants' supervisory status. At the conclusion of the hearing, the ALJ again recommended that the SHELRB dismiss the unit clarification petition and find that the three Sergeants are supervisors, and therefore excluded from the collective bargaining unit. FOP filed exceptions to this decision, along with a supporting brief and UMBC filed a responding brief.

Background Facts:

UMBC is situated on 500 acres in Baltimore County. Approximately 11,500 undergraduate and graduate students attend UMBC, of whom 4,000 live on campus. The police presence on the UMBC campus consists of a Chief of Police, a Deputy Chief, a Lieutenant, three Sergeants (the subject of this decision) and 21 patrol officers.¹ The University Police Department ("UPD") is divided into two areas: operational services and support services. Chief of Police John Cook is responsible for managing the entire department and coordinating criminal investigations with the Baltimore County and Maryland state police departments. Deputy Chief Manual Lewis ("Major Lewis") is responsible for the oversight of both operational and support services and monitoring the duties of all three sergeants. Lieutenant Ernest Howe is responsible for support services only, and does not oversee any of the Sergeants or patrol officers. (ALJD 5, Tr. 144-47; FOP Exh. 1, UMBC Exh. 1.)²

Operational services consist of three police squads and parking services. Each squad includes one Sergeant, one corporal and 5 patrol officers. The Sergeants are classified as Uniformed Patrol Officers IV ("UPO IV"), and they are responsible for overseeing the daily activities of the squad members. Such daily duties include: equipment inspection, roll call, assigning officers their daily posts, discussing any special needs for the day, and patrolling streets with the officers. Sergeants are also responsible for monitoring the operations and performance on their squads for adherence to

¹There are also numerous administrative personnel, including technology specialists, dispatchers, civilian officers and aides. (See UMBC Exh. 1.)

²The following are abbreviated citation references: "ALJD" is an abbreviation for the Administrative Law Judge's Decision; "Tr." is for the transcript of the OAH hearing; and "Exh." refers to the exhibits presented at that hearing.

department standards, taking necessary corrective action, as appropriate, and reviewing and editing reports from assigned staff. (ALJD 5-6 ; UMBC Exh. 2, Tr. 21-22, 53-58, 63, 89-90, 151-53 .)

In assigning officers to specific posts, the Sergeant evaluates his squad's crime fighting needs, in addition to the skills of the officers. The Sergeant notifies Administration (i.e. Deputy Chief and Chief) if more resources are needed to deal with a particular situation. Although the Deputy Chief assigns the patrol officers to each squad, the Sergeant is not directed by the Deputy Chief as to how to assign each officer within his squad. The Sergeant makes such daily assignments based on his assessment of his squad's needs that day. In the event that a crime occurs during his shift, the Sergeant immediately takes control of the crime scene, conducting the investigation and remaining on the scene until the investigation is complete.³ (ALJD 6, 13-14; Tr. 66-67, 89-90, 102-103, 125-27, 159-60.)

Moreover, the Sergeant is responsible for monitoring his squad members' performances, and preparing an annual evaluation for each squad member. The Sergeant must also prepare four forms that constitute the basis of the evaluation. Although the Deputy Chief meets with the Sergeant to review each evaluation, the Deputy Chief has never asked a Sergeant to change an evaluation. The Sergeant's evaluations determine whether the patrol officer will receive merit pay raises and promotions. The Sergeant also assigns officers to train new field officers, review that new officers' progress, and recommend whether he/she should be let off probation. (ALJD 6-7, 14-15 ; Tr. 29-30, 67-69, 92-93, 101-101, 124-25, 172-73, 180-81, 184, 189-90; UMBC Exh.3, 4 .)

The Sergeant is also responsible for taking action to correct problems with officers' performances by filing reports, counseling and occasional discipline. In the event that he finds that patrol officers are not properly performing their duties, he will file a "job observation report," detailing the officers' performance. Such reports are also filed to commend an officer for especially good performances. A Sergeant can also issue verbal reprimands to officers and even suspend an officer for one day, if he feels their conduct warrants such discipline. A Sergeant can also make recommendations of suspension or commendation to Deputy Chief Lewis. Additionally, a Sergeant can instigate formal charges against an officer, investigate an officer, and make a recommendation of dismissal. These charges will then go through a formal disciplinary panel, according to the Law Enforcement Officers Bill of Rights ("LEOBR"). (ALJD 7, 15 ; Tr. 71-72, 92-96, 133-36, 161-68, 199-203, UMBC Exh. 13, 14, 17, 21.)

Finally, the Sergeant is responsible for approving or denying overtime, recommending temporary transfers to other squads for manpower shortages, and monitoring sick leave usage. The Sergeants attend monthly Team Strategic Operation Planning ("TSOP") meetings with Chief Cook, Major Lewis and other members of the management and staff of the University Police Department ("UPD"). At the TSOP meeting, policy changes are announced and the Sergeants make suggestions

³Police Chief John Cook testified that crimes investigated on campus range from petty theft and parking violations to homicide and sexual assaults. (Tr. 147.)

and fully participate in this process. (ALJD 6-7, 13-14; Tr. 70-71, 74-78, 92, 102-106, 121-22, 207-212, 238 ; UMBC Exh. 5, 6, 10, 16, 18, 19, 22.)

When a Sergeant is off-duty, the corporal or most senior patrol officer is assigned to be the Officer in Charge ("OIC"). While the OIC has the authority to handle daily assignments, he/she does not have the authority to perform the majority of the Sergeant's duties. (ALJD 8, Tr. 38-41.) The patrol officer and three Sergeants who testified at the hearing stated that the patrol officers perceive the Sergeants to be the "boss" on the squad. (ALJD 12; Tr. 41-42, 76-78, 106-107.)

Decision:

Title 3 of the State Personnel and Pensions Article, Annotated Code of Maryland (Collective Bargaining Statute), § 3-102(b)(12) excludes from coverage under the collective bargaining statute, "any supervisory, managerial, or confidential employee of the State institution of higher education listed in subsection (a)(5) of this section, as defined in regulations adopted by the governing boards of this institution." The governing board of UMBC is the University System of Maryland's Board of Regents (BOR). The BOR's definition of supervisor is as follows:

A supervisory employee is an employee who has authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

The statutory definition lists the functions of a supervisor in the disjunctive, so UMBC must demonstrate that the Sergeants fulfill one of these functions to qualify as a supervisor. Moreover, BOR's inclusion of "independent judgment" in the definition of supervisor is patterned after the definition of supervisor found in the National Labor Relations Act ("NLRA"), Section 2(11), 29 U.S.C. § 152(11).⁴ The term "independent judgment" is not defined in any regulations or statutes governing collective bargaining, nor has it been defined by the NLRA. Indeed, as the Supreme Court has noted, "The statutory term 'independent judgment' is ambiguous with respect to the degree of

⁴The BOR modeled its definition after Section 2(11) of the NLRA, 29 U.S.C. § 152 (11), which defines supervisor as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

While this Board recognizes that it is not bound by the precedent of the National Labor Relations Board ("NLRB"), we find such precedent to be persuasive, as it is the preeminent federal agency interpreting labor law and similar issues as those before us today.

discretion required for supervisory status...It falls clearly within the Board's discretion to determine, within reason, what scope of discretion qualifies." *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 713 (2001).

Pursuant to the Supreme Court's mandate, the NLRB recently issued a decision in *Oakwood Healthcare, Inc.*, 348 NLRB No. 37 (September 29, 2006), in which it sought to define "independent judgment," for purposes of supervisory status under the NLRA.⁵ The NLRB held that, in order to exercise independent judgment, "an individual must at minimum act, or effectively recommend action, free of control of others and form an opinion or evaluation by discerning and comparing data." *Id.* at 8. Explaining the definition of independent judgment in relation to the authority to assign, the Board stated that "[t]he authority to effect an assignment. . . must be independent [free of the control of others], it must involve a judgment [forming an opinion or evaluation by discerning and comparing data], and the judgment must involve a degree of discretion that rises above the 'routine or clerical.'" *Id.* Slip op. at 8 (citations omitted).

Accordingly, under the BOR's definition of a supervisor (as well as the NLRA definition), in order to be considered a supervisor, an employee must exercise one of the twelve enumerated activities and, in so doing, exercise "independent judgment." Moreover, the party asserting supervisory status bears the burden of demonstrating that the individual possesses such authority. *Kentucky River*, 532 U.S. at 710-11. As shown below, we find that UMBC has met its burden of establishing the supervisory status of the three Sergeants.⁶

⁵In *Oakwood Healthcare*, the NLRB examined whether the acute care hospital charge nurses at Oakwood Heritage Hospital were statutory supervisors based on the charge nurses' role in assigning nursing personnel to patients and directing the nursing staff in the performance of their duties. The Board majority found that Oakwood's permanent charge nurses were 2(11) supervisors because they had the authority to "assign" and exercised independent judgment in making these assignments in the interests of their employer. 348 NLRB slip op. at 9-10, 13.

⁶Although we agree with the ALJ's ultimate decision on the supervisory issue, we disagree with the amount of weight she gave to certain aspects of the evidence. The ALJ found (ALJD 12) "of great significance" the fact that all three Sergeants acknowledged their supervisory role in the day to day operation of their squads, as well as the testimony by subordinates perceiving them to be their "boss." While such evidence may be used as secondary indicia of supervisory status, NLRB precedent is clear that neither an individual's self-perception or others' perception of him as boss are dispositive on the issue of actual supervisory authority. *General Security Services Corp.*, 326 NLRB 312 (1998), *enfd.* 187 F.3d 629 (8th Cir. 1998); *Billows Electric Supply*, 311 NLRB 878 fn.2 (1993). Likewise, the University's job description of a Sergeant's responsibilities is not dispositive evidence of what the Sergeants actually do on a daily basis. *Heritage Hall*, 333 NLRB 458, 458-59 (2001).

A. Sergeants Assign Duties to Officers on Their Squads

We first find that UMBC met its burden of demonstrating that the three Sergeants exercise supervisory authority in assigning duties to the patrol officers on their squads. As the NLRB recently held in *Oakwood Healthcare*, the authority to “assign” refers to “the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee. . . In sum, to ‘assign’ for purposes of Section 2(11) refers to the . . . designation of significant overall duties to an employee, not to the . . . ad hoc instruction that the employee perform a discrete task.” *Id.* Slip op. at 4.

As shown above, on a daily basis, each Sergeant is responsible for designating the five officers and one corporal in his squad, both to a particular place and particular set of tasks for the day. When the Sergeant first arrives on his shift, he gathers information from the previous shift, including whether there are special events on campus, or whether a crime has recently occurred. After collecting this information, and performing a roll call and equipment inspection, the Sergeant then considers the skills and the abilities of his five officers and corporal and makes the appropriate assignments for each officer.

Moreover, beyond the daily assignments given to each officer, Sergeants have responsibility for assignments in the larger sense, i.e. for the long-term needs of the squad. For example, when Sergeants find that they have increased needs in certain areas, they have the ability to temporarily reassign employees, shifting them around when necessary, again without approval from higher officials. As the Chief of Police testified, the Sergeant is responsible for ensuring that his employees are performing their assigned roles and “notifying administration if they need more resources.” Further, the Sergeant is responsible for taking charge of a crime scene and making decisions to initially direct the investigation, even beyond the end of his shift. Finally, Sergeants have the authority to select which officers will train new hires, and monitor that training in order to determine when the new officer should be released from probationary status.⁷

In sum, Sergeants have responsibility to assign “significant overall duties,” rather than simply discrete tasks. See *Oakwood Healthcare*, slip op at 4. Additionally, in making such assignments, we find that the Sergeants exercise their independent judgment. As one Sergeant testified, in making assignments, he is “not directed by the Deputy Chief on how to assign and staff posts for shifts.” For example, Sergeant Mark Armour testified that he has “leeway to use my

⁷Sergeants also have leeway to grant sick and vacation leave requests without approval from the Deputy Chief. In so doing, the Sergeants must consider whatever special events are taking place at the University, as well as the crime fighting needs for that day. Further, Sergeants are responsible for monitoring the use of sick leave to ensure that employees do not abuse it.

judgment and put officers where I need to put them.” These varied responsibilities (including initially assigning officers, reassigning them when necessary, granting leave, supervising a crime scene investigation, calling for additional help), demonstrate that Sergeants are making critical assignments to fully operate their squads in order to fight crime on campus. Sergeants must respond to daily needs of the campus in a way which takes into consideration both the skills of each officer on his/her squad, and also the priorities of crime fighting needs for that particular day. The fact that Sergeants complete these tasks without intervention or approval from higher officials, underscores their reliance on their own independent judgment in so doing. *Oakwood Healthcare*, slip op at 7-8 (assessing an employee’s skills before assigning a task indicates independent judgment).⁸

B. Sergeants Have Authority to Discipline Officers in their Squads

We also find that UMBC met its burden of showing that Sergeants possess supervisory authority to discipline officers in their squads. As noted above, the Sergeants have the authority to administer discipline ranging from verbal counseling (for minor infractions) to an immediate emergency suspension (for problems such as insubordination), to a recommendation for permanent dismissal. In none of these instances must a Sergeant first consult with a higher official. The Sergeants may also instigate an investigation of one of their squad members, or handle a first level grievance, if impropriety is suspected. The Sergeant may then assign another Sergeant to carry out the investigation and then issue a recommendation as to whether there is probable cause to pursue a complaint against the officer. Additionally, Sergeants can recommend permanent suspension and dismissal of officers to the Deputy Chief and Chief, if they feel that such action is warranted.

Moreover, there is ample testimony that the disciplinary decisions of Sergeants are made without input from higher officials. As Sergeant Wilkens testified, the higher level officials (i.e. Deputy Chief and Chief) routinely followed the Sergeants’ disciplinary recommendations.⁹ Likewise, Police Chief John Cook testified that he “never disagreed” with a Sergeant’s disciplinary recommendation, although he might ask for substantiation for that recommendation. As Chief Cook explained, he felt that he “can’t hold [Sergeants] accountable unless [the Sergeants] hold his people accountable.” Thus, the Chief has entrusted the Sergeants with this disciplinary authority in order

⁸See also *American River Transportation Co.*, 347 NLRB No. 93, 2006 WL 2429569 (August 18, 2006) (river boat pilots who have authority to assign, reassign and responsibly direct crew to perform particular tasks on a daily basis and during emergencies are supervisors). See also *Mayor and City Council of Ocean City, Maryland v. Victor Bunting*, 2006 WL 861068 (Md. Ct. Spec. App. April 4, 2006) (finding that captains and lieutenants that direct the day-to-day operations of the police department are supervisors, since they direct, evaluate and discipline officers).

⁹Following the Sergeant’s investigation, such recommendations for permanent transfer or dismissal would then proceed through the Law Enforcement Officers Bill of Rights (LEOBR) for a full hearing before a panel.

to allow them to manage their squad on a daily basis and correct any problems with officer's performances. Such disciplinary authority demonstrates the Sergeants' exercise of independent judgment, in determining what level of discipline (at least initially) to administer to the police officers in their squad. See *Wilshire at Lakewood*, 345 NLRB No. 80 (2005) (employee's ability to document employee infractions, which initiated disciplinary process, indicated supervisory authority).

C. Other Indicia of Supervisory Status

Two other factors, while they may not alone constitute supervisory authority, support our decision to uphold the ALJ's finding of supervisory status. First, the Sergeants are responsible for creating annual evaluations on each patrol officer and corporal in their squad, based on performance observation forms that they fill out on each officer throughout the year, in addition to assessing their police reports. These evaluations are used as the basis for pay increases and promotions. Such authority to evaluate employees is evidence of supervisory status, particularly where, as here, the evaluations are the basis of promotions and pay increases. See *Wilshire at Lakewood*, 345 NLRB No. 80 (2005) (authority to evaluate employees is indicia of supervisory status, particularly when combined with other supervisory factors).

Moreover, Sergeants are required to attend monthly meetings ("Team Strategic Operational Plan") together with other management officials. At such meetings, Sergeants are expected to share their thoughts and ideas on policy matters with management officials and later communicate any policy changes to their squad. Indeed, on several occasions, the Sergeants' expression of their viewpoint has resulted in policy changes to the police force, including the Sergeants' taking control of approval of leave and staffing issues and the wearing of the winter hats. (Tr. 209.) Such attendance at supervisory meetings, particularly where participation by the Sergeants is expected, has been held to be a secondary indicia of supervisory status.¹⁰

D. Distinguishing *Bowie State v. MCEA*

As FOP asserts, this Board has previously found that a police officer at Bowie State, with a similar classification to the Sergeants here (i.e. UPO IV), was not a supervisor, and therefore was entitled to be included within the bargaining unit. See *Bowie State University v. Maryland Classified Employees Association, Inc.*, SHELRB EL Case No. 2001-12/01, Opinion No. 13 (October 7, 2002). In so finding, SHELRB found that, although Sergeant Hall (at Bowie State) was the "lead officer" on his shift, "the authority to evaluate or direct the work performance of junior co-workers does not

¹⁰See *NLRB v. Chicago Metallic Corp.*, 794 F.2d 531 (9th Cir. 1986); *Monarch Federal Savings & Loan*, 237 NLRB 844 (1978); *Flex-Van Corp.*, 288 NLRB 956 (1977).

establish or constitute any of the prescribed criteria establishing supervisory status.” (Id. at 3.) In particular, SHELRB found that there was a failure of proof as to the officer’s exercise of independent judgment with respect to the Sergeant’s exercise of authority. Thus, although there was evidence presented with respect to Sergeant Hall’s disciplinary authority, such evidence “consists of directing compliance with established conduct and duty requirements, and in cases of non-compliance, generating incident reports.” Id.

The circuit court later agreed with SHELRB’s assessment of Bowie’s failure of proof on the supervisory issue. *Bowie State University v. MCEA*, Case Number 24-C-02-006286 (June 24, 2003). More specifically, the Court found that the Sergeant’s duties to “assign and direct work to other employees involve little to no independent judgment and are merely routine in nature.” Id. at 14. Thus, the Court found that the Sergeant’s role was limited to “relaying orders and reporting information to his superiors.” The Court further found that the Sergeant’s ability to suspend or recall personnel in certain situations did not elevate the Sergeant’s role to a supervisory position.

By contrast, in this case, as noted above, there is substantial evidence that the Sergeants assign and direct employees according to their own judgment of what the daily crime fighting needs are, without the approval of higher officials. Likewise, the evidence demonstrates that the Sergeants in this case administer discipline (ranging from verbal counseling to immediate suspension to recommendations for permanent termination) according to their own estimation of what discipline is necessary and without any intervention from higher officials. Thus, whereas there was a failure of proof on the “independent judgment” prong of the supervisory analysis in *Bowie State*, UMBC has demonstrated that the Sergeants in the unit exercise independent judgment in assigning, directing, and disciplining patrol officers in their squads.

SUMMARY

In sum, we hereby dismiss FOP’s unit clarification petition, seeking to include the three Sergeants in UMBC’s police department within the bargaining unit. Instead, we find that the three Sergeants are supervisors and therefore should have been excluded from the bargaining unit.

ORDER

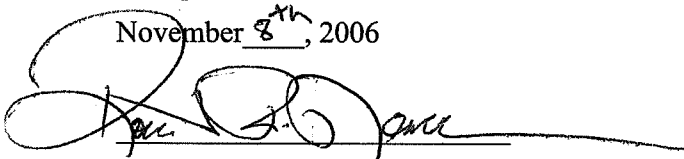
IT IS HEREBY ORDERED THAT:

Having found that the three UMBC Sergeants (classification UPO IV), are supervisors and therefore properly excluded from the bargaining unit, under State Pers. & Pens. Section 3-102(b)(12) (2004), we hereby ORDER that the Unit Clarification Petition in Board Case Number 2005-03 is DISMISSED.¹¹

BY ORDER OF THE STATE HIGHER EDUCATION LABOR RELATIONS BOARD

Annapolis, MD

November 8th, 2006

A large, stylized handwritten signature in black ink, appearing to read 'R. Neall', is written over a horizontal line.

Hon. Robert R. Neall, Chairman

¹¹We also deny FOP's request for oral argument in this case. We find that the parties had adequate opportunity to develop the record during the hearing before OAH and in their briefs to the Board.

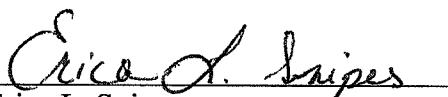
Certificate of Service

It is hereby certified that the attached Decision and Order in SHELRB Case No. UC 2005-03 was sent (via U.S. Mail) to the following parties on this 8th day of November, 2006.

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Erica L. Snipes
Acting Executive Director
SHELRB

FRATERNAL ORDER OF POLICE	*	BEFORE YOLANDA L. CURTIN
LODGE 82,	*	AN ADMINISTRATIVE LAW JUDGE
Petitioner	*	OF THE MARYLAND OFFICE
v.	*	OF ADMINISTRATIVE HEARINGS
UNIVERSITY OF MARYLAND	*	OAH No.: HELRB-LRB-01-06-12050
BALTIMORE COUNTY,	*	HELRB No.: UC 2005-03
Respondent	*	

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACTS
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On June 6, 2005, the Fraternal Order of Police Lodge 82 ("Petitioner") filed a petition against the University of Maryland Baltimore County ("UMBC") with the State Higher Education Labor Relations Board ("HELRB"). Petitioner's petition requests that sworn members of UMBC's Police Department ("UPD") holding the rank of Sergeant, classified as University Police Officer IV ("UPO IV"), be included within the UPD Bargaining Unit ("the bargaining unit"). On June 17, 2005, UMBC filed a response to the petition, alleging that Sergeants are supervisors and are therefore statutorily excluded from the bargaining unit under

State Personnel and Pensions Article section 3-102(b)(12). Md Code Ann., State Pers. & Pens § 3-102(b)(12) (2004).

On August 4, 2005, the HELRB delegated authority to the Office of Administrative Hearings ("OAH") to conduct a hearing regarding the Petitioner's petition. The scope of authority delegated to OAH is limited to the issuance of final findings of fact, proposed conclusions of law and a proposed order.

A pre-hearing conference was held on October 18, 2005, at OAH, 11101 Gilroy Road, Hunt Valley, MD 21031, before Yolanda L. Curtin, Administrative Law Judge ("ALJ"). John A. Austin, Esquire, appeared on behalf of the Petitioner. Dawna Cobb, Assistant Attorney General, appeared on behalf of UMBC. Pursuant to scheduling agreements reached by the parties, on October 20, 2005, the ALJ issued a Pre-hearing Conference Report and Order, which set forth timelines for the parties to submit motions and responses for summary decision, with supporting affidavits and exhibits. A hearing on the motion for summary decision was scheduled for December 1, 2005, at OAH. A hearing on the merits was scheduled for February 7 and February 8, 2006.

Thereafter, on November 1, 2005, UMBC filed a Motion for Summary Disposition, with a memorandum and accompanying exhibits in support of the motion. On November 18, 2005, the Petitioner filed a response in opposition to the motion. On November 28, 2005, UMBC filed a reply.

On December 1, 2005, a hearing on UMBC's Motion for Summary Disposition was held at OAH before ALJ Curtin. John Austin, Esquire, represented the Petitioner. Dawna

Cobb, Assistant Attorney General, represented UMBC. On December 20, 2005, ALJ Curtin issued a Proposed Ruling on Motion for Summary Decision, which granted UMBC's motion for summary decision. Thereafter, on March 1, 2006, HELRB remanded the matter for a full evidentiary hearing.

Subsequently, on May 5, 2006, a merits hearing was held at OAH before ALJ Curtin. The parties were present at the hearing and continued to be represented by their respective counsels.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the Rules of Procedure of the Office of Administrative Hearings and the Procedures for Administrative Hearings concerning matters before the HELRB. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2005); COMAR 28.02.01; and COMAR 14.30.11.

ISSUES

Do UPD Sergeants perform supervisory duties; and if so, do the Sergeants exercise independent judgment in the performance of those duties?

SUMMARY OF THE EVIDENCE

Exhibits

The Petitioner submitted the following exhibits that were accepted into evidence:

Petitioner Ex. #1 - UMBC Police Department, organizational chart

Petitioner Ex. #2 - USM Job Class Specification

Petitioner Ex. #3 - USM Definition for Supervisory Employee

Petitioner Ex. #4 - Performance Management Process Performance Expectations

UMBC submitted the following exhibits that were accepted into evidence:¹

- UMBC #1 - UMBC Police Department, organizational chart
- UMBC #2 - Job Class Specifications for UPO IV
- UMBC #3 - Performance Monitoring Report
- UMBC #4 - Performance Management Process ("PMP")
- UMBC #5 - On-demand Leave Policy
- UMBC #6 - Request for Leave
- UMBC #7 - Manual Excerpt - Sergeants Duty to Supervise Subordinates
- UMBC #8 - Manual Excerpt - Job Observation
- UMBC #10 - Manual Excerpt - Overtime
- UMBC #11 - Manual Excerpt - Complaints
- UMBC #12 - Manual Excerpt - Criminal Investigation Reports
- UMBC #13 - Manual Excerpt - Disciplinary Procedures
- UMBC #14 - Manual Excerpt - Formal Counseling of Department Police Employees
- UMBC #15 - Manual Excerpt - Requests for Training
- UMBC #16 - Memorandum, dated March 15, 1999, from Chief Cook to staff
- UMBC #17 - Manual Excerpt - Insubordination Policy
- UMBC #18 - January 7, 1999 Team Strategic and Operational Planning Memorandum
- UMBC #19 - June 24, 1999 Memorandum from Chief Cook to Sergeants
- UMBC #21 - USM Policy on Grievances
- UMBC #22 - Manual Excerpt - Transfer and Reassignment
- UMBC #23 - PMP Form

¹ UMBC did not submit into evidence Exhibits #9 and #20.

Witnesses

The following witnesses testified on behalf of the Petitioner:

1. Officer John Edward Moran, IV, UPD
2. Sergeant Mark Armour, UPD
3. Sergeant William Henry Wilkens, UPD
4. Sergeant Bernard Perry, Jr., UPD

UMBC presented the testimony of Chief John Cook, UPD.

FINDINGS OF FACTS

I find the following by a preponderance of the evidence:

1. UPD is overseen by Chief of Police John Cook ("Chief Cook"). Directly under Chief Cook is Deputy Chief Manual Lewis ("Major Lewis").
2. UPD is divided into two areas: operational services and support services. Major Lewis is responsible for the oversight of operational and support services of the UPD.
3. In the support services area, Lieutenant Ernest Howe ("Lt. Howe") is responsible for evidence, special events, communications and other services that do not involve the supervision of patrol officers, Corporals and Sergeants.
4. Operational services consist of three police squads and parking services. Officers with the rank of UPO IV and below serve in the three police squads. Each police squad includes one Sergeant, one Corporal and 5 patrol officers.²
5. The Sergeants are classified as UPO IV and are responsible for the day-to-day operations of their assigned squad. Their assigned duties include the following:
 - Supervise routine operations and staff of a shift
 - Evaluate staff
 - Monitor operation and performance of their squads for adherence to department standards
 - Take corrective action as appropriate

² Currently there are two vacant patrol officer positions.

- Prepare reports and make recommendations to improve operations
 - Investigate citizen complaints regarding police performance
 - Inspect law enforcement personnel under their supervision
 - Review and edit reports from assigned staff
6. On August 24, 2001, the Board of Regents for USM approved the following definition for Supervisor:
- A supervisory employee is an employee who has authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.
7. In exercising their assigned duties, Sergeants perform the following:
- Assign patrol officers to shifts and duties based on a Sergeant's assessment of which areas need patrol. The assignments are based on special events at UMBC, crime fighting needs, and manpower shortages.
 - Assign a field training officer to work with a new hire. A Sergeant oversees the training of a new hire by reviewing the daily activities of the new hire with the field training officer. Once the training is completed, a Sergeant then recommends to Major Lewis whether the probationary period of a new hire should end or if it should be extended.
 - Approve or deny overtime based on a Sergeant's assessment of crime fighting needs and/or manpower shortages.
 - Recommend the transfer of patrol officers to other specialized units. Also, if other squads have manpower shortages, a Sergeant selects which officer will be transferred to another squad.
 - Grant officers' requests to swap shifts and assignments.
 - Recall an officer to work a shift after leave has been granted.
 - Have the sole authority to approve requests made by patrol officers for specialized and professional training.
 - Have the authority to approve on demand leave for patrol officers, which includes leave due to illness or family emergency.

- Monitor sick leave usage by directing an officer to be on a one-day reporting requirement if sick leave abuses are brought to a Sergeant's attention by management.
 - Have the sole authority to approve or deny vacation and personal leave for each officer in the Sergeant's squad. A Sergeant's approval or denial of vacation and/or personal leave is dependent on any special events at UMBC, crime fighting needs, and manpower shortages.
 - Responsible for completing annual reviews of officers in the Sergeant's assigned squad, which involves rating each officer on his/her job performance. A Sergeant's annual review is used to determine an officer's eligibility for promotion and merit pay. Each Sergeant maintains documentation on each officer in the squad, which is used during the evaluation process.
 - Can take disciplinary action against an officer, which includes one day emergency suspension. Also, can elect to conduct a formal counseling session with an officer charged with inappropriate behavior and/or minor infractions, as well as adjust grievances to allow for an informal disposition of the officer's conduct.
 - Delegate to a Corporal any administrative tasks that are part of a Sergeant's daily duties.
 - Recommend commendations for an officer based on a Sergeant's assessment of the officer's work.
8. In addition to overseeing the day-to-day operations of the squads, Sergeants participate in Team Strategic Operation Planning ("TSOP") meetings with Chief Cook, Major Lewis, and other members of the management staff of UPD.
 9. TSOP meetings are held monthly and are chaired by Chief Cook. During the meetings different policies and procedures affecting UPD are discussed with the Sergeants and they recommend to Chief Cook whether the policies and procedures should be adopted or changed.
 10. Sergeants report directly to Major Lewis, who is responsible for ensuring that Sergeants are performing their duties.
 11. Prior to an officer's evaluation with his Sergeant, a Sergeant will meet with Major Lewis to discuss the evaluation. Major Lewis' role in the evaluation of an officer is limited to ensuring that the Sergeant has supported his rating of an officer with documentation and that all Sergeants are using the same standard of review. Major Lewis does not have the authority to change a Sergeant's evaluation of an officer.

12. Sergeants also perform duties that include equipment inspection, roll call, and report review.
13. When a Sergeant is off duty, the Corporal on the squad will be assigned as the shift supervisor. When both the Sergeant and Corporal are off duty, a senior patrol officer is assigned as the officer in charge ("OIC") for the shift.
14. When a Sergeant is off duty, the Corporal or OIC handles the following duties: roll call, equipment inspection, report review and post assignments.
15. Corporals and OICs do not have the authority to do the following:
 - handle performance evaluations
 - participate in TSOP meetings
 - assign officers to training
 - recommend that a new hire's probation be extended or terminated
 - approve vacation, personal and/or sick leave
 - take disciplinary action against another officer
 - call an officer to work a shift who was previously granted leave
 - allow officers to swap shifts or change assignments
 - recommend changes to policies and procedures
 - recommend commendations for officers

DISCUSSION

State Personnel and Pensions Article section 3-102(b) provides that certain employees of USM must be excluded from a collective bargaining unit. Specifically, those who must be excluded from a collective bargaining unit are "any supervisory, managerial or confidential employee...as defined in regulations adopted by the governing board of the institution." Md. Ann., Code, State Pers. & Pens § 3-102(b)(12).

On August 24, 2001, the Board of Regents for USM approved the following definition for Supervisor:

- A supervisory employee is an employee who has authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

FOP Ex. #3. Although the above definition includes terms associated with traditional notions of supervision, such as “supervises,” “evaluates” and “monitors,” the terms used to describe the job of Sergeant are not controlling in determining whether Sergeants are supervisors. Instead, under USM’s definition of supervisor, a Sergeant is considered a supervisor, and therefore excluded from the bargaining unit, if the duties he or she performs are: 1) *any* of the enumerated duties found in the definition of supervisor adopted by UMS; *and* 2) the duties are exercised by the use of “independent judgment” and are not routine or clerical in nature. *See Id.*

USM’s inclusion of “independent judgment” in the definition of supervisor is patterned after the definition of supervisor found in the National Labor Relations Act, § 2(11), 29 U.S.C. § 152 (11).³ The term “independent judgment” is not defined in any regulations or statutes governing collective bargaining, nor is a separate definition for the term found in the National Labor Relations Act. In light of this omission in the regulations and governing statutes, the

³ In section 2(11) The Labor Relation Act defines the term “supervisor” in the following manner:

The term supervisor means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

29 U.S.C. § 152(11).

Supreme Court has held that the term “independent judgment” is “ambiguous with respect to the degree of discretion required for supervisory status.” NLRB v. Kentucky River Inc., 532 U.S. 706, 713 (2001) (finding that “it falls clearly within [NLRB’s] discretion to determine, within reason, what scope of discretion qualifies” a person for supervisory status). Although not defining what “independent judgment” means, in Kentucky River, the Supreme Court did state that when an employee exercises one of the supervisory functions enumerated in § 2(11) of the National Labor Relations Act, “with judgment that possesses a sufficient degree of independence, [the NLRB] invariably finds supervisory status.” 532 U.S. at 716 (citing Trustees of Noble Hospital, 218 N.L.R.B. 1441, 1442 (1975)).

In the instant case, the Petitioner filed a petition to have sworn officers of UPD who are classified as Sergeants, UPO IV, included in the bargaining⁴ unit. Specifically, the Petitioner raises two arguments to support its position. First, that the duties performed by Sergeants are not performed by the use of independent judgment, since, according to the Petitioner, their decisions are subject to review by the Deputy Chief and the Chief of Police. Second, that the duties of the Sergeants are also performed by patrol officers and corporals, and in light of this, a Sergeant’s role in the squad is interchangeable with other members of the squad. Therefore, the Petitioner argues that a Sergeant’s duties are routine and clerical in nature which would warrant a finding that Sergeants are not supervisors with the meaning of USM’s definition. To further its argument, the Petitioner relies on the decision of Bowie State v. Maryland Classified Employees

⁴ Under State Personal & Pensions Article § 3-101(c), the following definition applies:

- ...
- (c) Collective bargaining – “Collective bargaining” means good faith negotiations by authorized representatives of employees and their employer with the intention of:
- (1) reaching an agreement about wages, hours, and other terms and conditions of employment; and
 - (2) incorporating the terms of the agreement in a written memorandum of understanding.

Md. State Ann. Code, State Pers. & Pens. § 3-101(c) (2004).

Ass'n, HELRB Case No. 2001-12/01. Opinion No. 13, *affirmed by* Case No. 24-C-02-006286 (Circuit Court for Baltimore City June 24, 2003), which found that a Sergeant employed with the Bowie State University police department was not a supervisor. According to the Petitioner, the Bowie State decision is analogous to the instant case and a similar finding is warranted.

UMBC argues that the duties performed by Sergeants are supervisory in nature, since both the job description of Sergeants and the testimony presented at the hearing, show that Sergeants run the day-to-day operations of their squads and in doing so must exercise independent judgment in making decisions that affect the entire squad as well as each individual officer in the squad. Specifically, UMBC argues that Sergeants make decisions and recommendations in the assignment, transfer, evaluation and discipline of the members of their squad.

In reviewing the documentary evidence presented in this case, as well as the testimony that was provided by the various witnesses, I must conclude that Sergeants at UPD are supervisors within the meaning of USM's definition of supervisor, and therefore are excluded from the bargaining unit. I do not find that the testimony and documentary evidence presented in this case supports a finding that the duties performed by the Sergeants at UPD are similar to the duties of Sergeant Hall at Bowie State, who the HELRB found did not engage in supervisory duties, and who therefore could be included in the Bowie State bargaining unit. Moreover, I do not agree with the Petitioner's contention that Sergeants at UPD exercise supervisory duties that are undertaken by other members of the squad, specifically corporals and patrol officers, and therefore the Sergeants' duties should be deemed routine and clerical in nature. My findings are discussed below.

Addressing first the Petitioner's reliance on Bowie State, although this decision is not binding authority, I will briefly discuss it, since the Petitioner relies on the case to support its contention that Sergeants are not supervisors.

In Bowie State, Sergeant Hall ("Sgt. Hall") sought inclusion in the university's police bargaining unit. To support his position that he was not a supervisor, Sgt. Hall submitted an affidavit that attested to his duties and responsibilities with Bowie State police. According to Sgt. Hall's affidavit, although he was the highest ranking officer in the squad, his position required him to relay orders from the command staff to subordinates and provide information to the command staff about the subordinates. In addition, all decisions that concerned the hire or discipline of employees required the approval of a Patrol Division Supervisor, which was not Sgt. Hall. Based on the evidence presented at the hearing, which included Sgt. Hall's affidavit, his duties were found by the HELRB to be routine and clerical in nature, since the duties performed by Sgt. Hall's were not exercised with independent judgment. On appeal, Judge Heller of the Circuit Court for Baltimore City, affirmed the HELRB. Of particular significance to Judge Heller was the fact that evidence was not presented before the HELRB to show that Sgt. Hall exercised independent judgment in the performance of his duties. *See Id.*

Unlike Bowie State, I find that based on the evidence presented in this case, Sergeants exercise several of the duties listed in USM's definition of a supervisor. Moreover, the testimony of the three Sergeants of UPD establishes that their duties are not routine or clerical in nature, but performed with a sufficient degree of independence to warrant a finding that independent judgment is used in the performance of those duties. Of great significance here, is the fact that all three Sergeants acknowledged their supervisory role in the day-to-day operations of their squads, as well as the fact that their subordinates perceive them to be their "boss."

USM's Job Class Specification for UPO IV, which applies to Sergeants, details the various duties and responsibilities undertaken by Sergeants. The job summary for a Sergeant includes the following: functions as a supervisor of a shift and/or complex specialized unit; supervises routine operations and staff of a shift; evaluates staff, monitors operation and performance for adherence to department standards; takes corrective action as appropriate, prepares reports and makes recommendations to improve operations; investigates citizen complaints regarding police performance; inspects law enforcement personnel under their supervision; and reviews and edits reports from assigned staff. UMBC. Ex. 2.

In addition, the three Sergeants at UPD testified at the hearing regarding the daily duties they perform as squad supervisor. Two of the Sergeants have been in the position of squad supervisor for several years, specifically Sgt. Perry and Sgt. Wilkens. The third Sergeant, Sgt. Armour, has been a Sergeant for a relatively short period of time, since August of 2005. Collectively, all three presented testimony regarding the supervisor nature of their work in overseeing the day-to-day operations of their individual squads. The substance of their testimony is detailed below.

UPD has three police squads that are made up of the following individuals: one Sergeant, one Corporal, and 5 patrol officers. On a daily basis three shifts must be covered by the squads. Although the time frames for the three shifts are established by Chief Cook, the daily operations of the individual squads are handled by the Sergeants. To ensure that the Sergeants are handling the daily operations of their assigned squad, the Sergeants are supervised by Major Lewis who is directly under Chief Cook. *See also* UMBC Ex. #1

In overseeing each of their squads, Sergeants must assign patrol officers to shifts and duties depending on their assessment of which areas need patrol by considering any special

events at UMBC, as well as crime fighting needs. *See also* UMBC Ex. #16. Similarly, to ensure that the crime fighting needs of UMBC are met, Sergeants make decisions on approving overtime work, vacation and personal leave for patrol officers. *See also* UMBC Ex. #10. In the event that staffing shortages occur or crime fighting needs must be met, Sergeants have the authority to recall an officer to work a shift after leave has been granted.

In supervising each officer in the squad, Sergeants also have the role of recommending the transfer of patrol officers to other specialized units, as well as approve squad swaps among officers. Although Chief Cook and Major Lewis assign members to specific squads, Sergeants have the authority to approve an officer's request to switch squads, as long as each Sergeant agrees on the change. Similarly, in the event that a squad has manpower shortage, it is up to the Sergeant to determine which member of his squad can be temporarily transferred to another squad.

In monitoring the performance of their individual squads, Sergeants must maintain records of each officer's performance in the squad. These records are then used by the Sergeant to make commendations and evaluate annually each officer. In completing an annual review Sergeants rate an officer on his job performance, which is used to determine an officer's eligibility for promotion and merit pay. By performing these duties Sergeants engage in identifying and setting performance expectations for each officer. These duties involve the exercise of independent judgment in rating an officer and making an evaluation based on the Sergeant's review of an officer's job performance. In addition, the evaluations are conducted by the Sergeant and he is the one responsible for signing off on each of the evaluations he completes. *See also*, UMBC Ex. #23.

With new hires, a Sergeant oversees the training of a new hire and recommends whether the probationary period of a new hire should be extended or terminated. Specifically, a Sergeant assigns a field training officer to a new hire. During the training period, the Sergeant reviews the daily activities of the new hire with the field training officer. Once the training is completed, a Sergeant then recommends to Major Lewis whether the probationary period of a new hire should end or be extended. Consequently, a new hire position with UPD is dependent on the recommendations made by the Sergeant.

In instituting disciplinary action against a squad officer, a Sergeant has the authority to take different disciplinary approaches. In the most severe cases, a Sergeant can suspend for one-day a subordinate and file formal charges. Regarding minor violations and inappropriate behaviors, instead of pursuing a formal grievance process, a Sergeant can elect to complete a job observation report and place the report in an officer's file. If a formal grievance process has been pursued, a Sergeant can conduct a formal counseling session with a subordinate charged with inappropriate behavior and/or minor infractions, and therefore pursue an informal disposition of the disciplinary action. In choosing what disciplinary course to take with a subordinate, Sergeants must assess the conduct of the officer and make an independent judgment as to the appropriate discipline to impose. *See also* UMBC Exhibits #7, #8, #13 and #21.

In addition, Sergeants at UPD participate in TSOP meetings with the Chief and other management staff in which policies and procedures for UPD are discussed. As testified to by Chief Cook, TSOP meetings are held monthly and are chaired by Chief Cook. During the meetings different policies and procedures affecting UPD are discussed with the Sergeants and the Sergeants provide input and recommendations to the Chief, which he relies on to adopt or change the policies and procedures. The Sergeants' participation in the TSOP meetings is

instrumental in shaping the policy and procedures that are implemented for UPD. *See also* UMBC Ex. #18. In addition, in their testimony all three Sergeants acknowledged that Chief Cook relies, and takes action on, their recommendations.

I also find of great significance the fact that Sergeants at UPD handle the day-to-day operations of their squads and make judgment calls regarding their subordinates that are not subject to approval or denial by Major Lewis or Chief Cook. Specifically, the Sergeants and Chief Cook testified that although Major Lewis is the Sergeants' supervisor, Major Lewis does not become involved with the daily operations of the squad. Rather, Major Lewis' role is to ensure that Sergeants are exercising their supervisory duties. For example, as discussed previously, Sergeants have the sole responsibility of completing annual evaluations with the members of their squads. Although Major Lewis does review each evaluation, his role is limited to that of a reviewer in order to ensure two things: 1) a Sergeant has provided the documentation necessary to support his rating of a subordinate, and 2) each Sergeant is using the same standard of review. As testified to by Chief Cook, in the event that Major Lewis does not agree with the Sergeant, he does not have the authority to change a Sergeant's evaluation of a subordinate; instead, a Sergeant is the only person that can change the evaluation.

I find that the testimony of the Sergeants and Chief Cook establishes that Sergeants in overseeing the daily operations of their squads are responsible for directing, evaluating and disciplining employees, as well as ensuring that the policy and procedures of UPD are followed. Accordingly, I find them to be supervisors. *See* Mayor and City Council of Ocean City, Maryland v. Victor Bunting, 2006 WL 861068 (Md. Ct. Spec. App. April 4, 2006)(finding that captains and lieutenants that direct the day-to-day operations of the police department are supervisors, since they direct, evaluate and discipline officers).

The Petitioner's alternative argument rests with its assertion that the above described duties are routine and clerical in nature, since the duties are routinely performed by other officers in the squad whenever they are called upon to be the OIC. To support this argument the Petitioner presented the testimony of Officer Moran; however, I do not find that Officer Moran's testimony supports the Petitioner's contention.

Officer Moran has been a patrol officer for UPD for approximately five years. On at least five occasions he has served as the OIC. He testified that as the OIC he has performed similar duties as a Sergeant. Specifically, he has been responsible for roll call, equipment inspection, report reviews and post assignments. Although Officer Moran has served as an OIC, I do not find that in that capacity he has been delegated any of the supervisory duties of a Sergeant.

I agree that the OIC duties performed by Officer Moran are routine and clerical in nature, and fall within a Sergeant's daily responsibilities. Nonetheless, as discussed previously, Sergeants engage in a wide variety of supervisory duties that cannot be undertaken by an OIC. As testified to by Officer Moran, as an OIC he has never: handled performance evaluations, participated in TSOP meetings, assigned officers to training, recommended that a new hire's probation be extended or terminated, approved vacation, personal and/or sick leave, taken disciplinary action against another officer, called an officer to work a shift who was previously granted leave, authorized officers to swap shifts or change assignments, recommended changes to policies and procedures, and recommended commendations for officers.

In sum, the collective testimony of the Sergeants, which is supported by the documentary evidence presented in this case, establishes that their duties include the assignment, suspension, discharge, reward, discipline and the transfer of employees, and the adjustment of grievances, or

the recommendation of such action; all of which fall within the definition of a supervisor adopted by USM. These tasks are not routine in nature. Instead, in exercising these duties, Sergeants at UPD use their individual judgment in making decisions, which affect officers under their supervision.

PROPOSED CONCLUSIONS OF LAW

Based upon the Proposed Findings of Fact and Discussion above, I recommend that the HELRB conclude, as a matter of law, that:

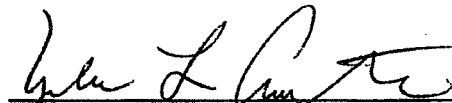
(1) UPD Sergeants exercise supervisory duties, utilizing independent judgment, and therefore UPD Sergeants are "supervisors" under USM's regulations and State Pers. & Pens. Section 3-102(b)(12) (2004);

(2) Supervisors are prohibited from being members of a bargaining unit and thus UPD Sergeants must be excluded from the UPD bargaining unit under State Pers. & Pens. Section 3-102(b)(12) (2004);.

PROPOSED ORDER

I recommend that the Petition filed by Fraternal Order of Police Lodge 82 to include Sergeants in the UPD collective bargaining unit be **DISMISSED**.

June 1, 2006
Date


Yolanda L. Curtin
Administrative Law Judge

YLC/
#81814

REVIEW RIGHTS

Any party aggrieved by the proposed decision may file written exceptions thereto and request an opportunity to present oral argument. Such exceptions and any request for argument must be made within twenty (20) days from the date of receipt of the proposed decision. A response to the exceptions may be filed within fifteen (15) days from the filing of the exceptions. The written exceptions must contain the legal and factual basis for the exceptions or response, and be accompanied by copies of any portions of the record referred to in the exceptions.

COMAR 14.30.11.23. The written exceptions and request for argument, if any, should be directed to Karl K. Pence, Executive Director, Maryland State Higher Education Labor Relations Board, 839 Bestgate Road, Suite 400, Annapolis, MD 21401. The Office of Administrative Hearings is not a party to any exceptions or appeal process.

cc: Karl Pence, Executive Director
MD HEC Labor Relations Board
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FRATERNAL ORDER OF POLICE	*	BEFORE YOLANDA L. CURTIN
LODGE 82,	*	AN ADMINISTRATIVE LAW JUDGE
Petitioner	*	OF THE MARYLAND OFFICE
v.	*	OF ADMINISTRATIVE HEARINGS
UNIVERSITY OF MARYLAND	*	OAH No.: HELRB-LRB-01-06-12050
BALTIMORE COUNTY,	*	HELRB No.: UC 2005-03
Respondent	*	

* * * * *

Exhibit List

Exhibits

The Petitioner submitted the following exhibits that were accepted into evidence:

Petitioner Ex. #1 - UMBC Police Department, organizational chart

Petitioner Ex. #2 - USM Job Class Specification

Petitioner Ex. #3 - USM Definition for Supervisory Employee

Petitioner Ex. #4 - Performance Management Process Performance Expectations

UMBC submitted the following exhibits that were accepted into evidence:

UMBC #1 - UMBC Police Department, organizational chart

UMBC #2 - Job Class Specifications for UPO IV

UMBC #3 - Performance Monitoring Report

UMBC #4 - Performance Management Process ("PMP")

UMBC #5 - On-demand Leave Policy

UMBC #6 - Request for Leave

UMBC #7 - Manual Excerpt - Sergeants Duty to Supervise Subordinates

UMBC #8 - Manual Excerpt - Job Observation

UMBC #10 - Manual Excerpt - Overtime

UMBC #11 - Manual Excerpt - Complaints

UMBC #12 - Manual Excerpt - Criminal Investigation Reports

UMBC #13 - Manual Excerpt - Disciplinary Procedures

UMBC #14 - Manual Excerpt - Formal Counseling of Department Police Employees

UMBC #15 - Manual Excerpt - Requests for Training

UMBC #16 - Memorandum, dated March 15, 1999, from Chief Cook to staff

UMBC #17 - Manual Excerpt - Insubordination Policy

UMBC #18 - January 7, 1999 Team Strategic and Operational Planning Memorandum

UMBC #19 - June 24, 1999 Memorandum from Chief Cook to Sergeants

UMBC #21 - USM Policy on Grievances

UMBC #22 - Manual Excerpt - Transfer and Reassignment

UMBC #23 - PMP Form